

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION**

**Agenda # III.A.2.**

**Agenda Item Summary:** The Department requests the Board initiate rulemaking to amend the air quality incorporation by reference rules to adopt the current editions of federal statutes and regulations, and state rules. Other proposed amendments that are included in this rulemaking would repeal a reference to the Montana Code Annotated (MCA), update references to a source of federal materials, delete the incorporation by reference of 40 CFR 52, subpart BB, revise references to the federal mercury regulations, and make minor editorial amendments.

**List of Affected Rules:** This rulemaking would amend ARM 17.8.102, 17.8.103, 17.8.201, 17.8.202, 17.8.302, 17.8.602, 17.8.767, 17.8.801, 17.8.802, 17.8.818, 17.8.901, 17.8.902, 17.8.1002, 17.8.1007, 17.8.1102, 17.8.1201, 17.8.1202, 17.8.1206, 17.8.1212, 17.8.1232, 17.8.1234, 17.8.1302, 17.8.1402, 17.8.1502, and 17.8.1509.

**Affected Parties Summary:** The proposed rule amendments could affect all parties regulated by the Department under the air quality rules.

**Scope of Proposed Proceeding:** The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments to the above-stated rules and take testimony on inclusion of the rule amendments into the State Implementation Plan (SIP).

**Background:** Annually, the Department requests that the Board update the rules that incorporate by reference federal statutes and regulations, and state administrative rules. The incorporation by reference updating is accomplished by amending the dates in ARM 17.8.102. An attachment addresses the major changes in federal rules that will be adopted as a result of this action. The failure to adopt the most recent edition of the Code of Federal Regulations may result in the loss of primacy for the air program. Other proposed amendments would repeal a reference to the Montana Code Annotated, because the version of state statutes in effect at the time would apply in all instances where a state statute is applicable; would update references to regional EPA libraries as a source of federal materials; would remove the incorporation by reference of 40 CFR 52, subpart BB, which is the Montana State Implementation Plan, because subpart BB contains existing state requirements already adopted by the Board which EPA has published in the CFR in order to make them federally enforceable; would revise references to the federal mercury regulations; and would make minor editorial changes to conform to the current format of the Secretary of State's office and to correct a typographical error.

**Hearing Information:** The Department recommends the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendments and inclusion of the proposed amendments in the SIP. Section 75-2-205, MCA, states that no rule, rule amendment, or rule repeal under the Clean Air Act of Montana may take effect except after public hearing on due notice. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP.

**Board Options:** The Board may:

1. Authorize the Department to initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules;
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

**DEQ Recommendation:** The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the proposed MAR notice.

### **Description of Proposed Rule Revisions:**

#### 17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

- (1) Unless expressly provided otherwise, in this chapter where the board has:
- (a) adopted a federal regulation by reference, the reference is to the July 1, ~~2005~~ 2006, edition of the Code of Federal Regulations (CFR);
  - (b) adopted a section of the United States Code (USC) by reference, the reference is to the 2000 edition of the USC and Supplement III IV (~~2003~~ 2006);
  - ~~(c) referred to a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA;~~
  - ~~(d)~~ (c) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2005~~ 2006, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

The proposed amendment to ARM 17.8.102(1)(c) would delete the reference to the Montana Code Annotated (MCA). The proposed amendments to ARM 17.8.103(3)(d), 17.8.202(3)(d), 17.8.302(3)(d), 17.8.602(3)(d), 17.8.767(3)(d), 17.8.802(3)(d), 17.8.902(3)(d), 17.8.1002(3)(d), 17.8.1102(3)(d), 17.8.1202(3)(d), 17.8.1302(2)(d), 17.8.1402(2)(d), and 17.8.1502(3)(d) would update a source of federal materials.

The proposed amendments to ARM 17.8.103(1)(e) and 17.8.767(1)(c) would remove the incorporation by reference of 40 CFR 52, subpart BB, which is the Montana State Implementation Plan (SIP). The proposed amendments to ARM 17.8.103(1)(h), 17.8.302(1)(a)(ii), 17.8.767(1)(d), 17.8.802(1)(d), 17.8.902(1)(a), 17.8.1002(1)(a), 17.8.1202(1)(b) and (c), and 17.8.1502(1)(b), (d), and (e) would revise references to the

federal mercury regulations.

The proposed amendments to ARM 17.8.201(3), 17.8.801(4)(a)(i), 17.8.801(22)(a)(iii), 17.8.818(7)(b) and (c), 17.8.901(12)(a)(iii), 17.8.1007(1)(c), 17.8.1201(1)(e) and (23), 17.8.1206(5)(d) and (k), 17.8.1212(3)(c), 17.8.1232(1)(b), 17.8.1234(1)(b), 17.8.1502(1)(a), (c), and (e), and 17.8.1509(1) would make editorial changes to conform to the current format of the Secretary of State's office. The proposed amendments to ARM 17.8.901(11)(b)(iii) would correct a typographical error.

These amendments are described in the proposed MAR notice.

**Enclosures:**

1. Draft Notice of Public Hearing on Proposed Amendment

## **Board of Environmental Review Attachment to IBR Executive Summary**

This attachment lists the major changes to the Code of Federal Regulations (CFR) sections that are incorporated by reference in the air program rules, and were published in the Federal Register between July 1, 2005 and June 30, 2006. These changes are included in the July 1, 2006, CFR edition that is being incorporated by reference in this rulemaking.

**CFR Sections Affected:** 40 CFR 51.166

**General Explanation:** EPA promulgated amendments to **retain the existing nitrogen dioxide (NO<sub>2</sub>) increments as part of the Agency's regulations for the Prevention of Significant Deterioration (PSD) of air quality from emissions of nitrogen oxides (NOX)**. These regulations are designed to preserve the air quality in national parks and other areas that are meeting the national ambient air quality standards (NAAQS) for NO<sub>2</sub>.

**CFR Sections Affected:** 40 CFR Part 51, Appendix W

**General Explanation:** EPA promulgated several additions and changes to its **Guideline on Air Quality Models**, which addresses the regulatory application of air quality models for assessing criteria pollutants under the Clean Air Act. Changes include recommendation of a new dispersion model – AERMOD, removal of an existing model – the Emissions Dispersion Modeling System (EDMS), and various editorial changes to update and reorganize information.

**CFR Sections Affected:** 40 CFR 60.13

**General Explanation:** EPA promulgated amendments to correct a minor error in its August 2000 final rule that revised the monitoring requirements in Performance Specification 1 (PS-1). The revisions updated requirements for source owners and operators who must install and use continuous stack or duct opacity monitoring equipment and also updated design and performance validation requirements for continuous opacity monitoring system (COMS) equipment in PS-1.

**CFR Sections Affected:** 40 CFR 60.24; 60.40Da; 60.41Da; 60.45Da; 60.48Da; 60.50Da; 60.40b; 60.4104; 60.4140-4141

**General Explanation:** This action sets forth EPA's decision after reconsidering certain aspects of the March 29, 2005, final rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List" (Section 112(n) Revision Rule). EPA also issued its final decision regarding reconsideration of certain issues in the May 18, 2005, final rule entitled "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (Clean Air Mercury Rule; CAMR).

After considering the petitions for reconsideration and the comments received, EPA did not revise the final Section 112(n) Revision Rule other than explaining in more detail what it meant by the effectiveness element in the term "necessary." The only two

substantive changes EPA made to CAMR, in response to comments, involved revisions to the State mercury (Hg) allocations and to the new source performance standards (NSPS). EPA also finalized the regulatory text that clarifies the applicability of CAMR to municipal waste combustors (MWC) and certain industrial boilers. Finally, EPA denied the requests for reconsideration with respect to all other issues raised in the petitions for reconsideration submitted for both rules.

**CFR Sections Affected:** 40 CFR 60.40Da-44Da; 60.48Da-50Da; 60.40b-48b; 60.40c-43c; 60.45c; 60.47c-48c

**General Explanation:** EPA promulgated amendments to the **emission standards for nitrogen oxides (NOX), sulfur dioxide (SO<sub>2</sub>), and particulate matter (PM) contained in the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units.**

The amendments revised the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units; revised the existing standards for NOX emissions by reducing the numerical emission limits for utility steam generating units; and revised the standards for SO<sub>2</sub> emissions for both electric utility and industrial-commercial-institutional steam generating units. The amendments also included several technical clarifications and compliance alternatives.

**CFR Sections Affected:** 40 CFR 60.334-335

**General Explanation:** EPA promulgated amendments to revise certain portions of the **standards of performance for stationary gas turbines** to clarify that EPA did not impose new requirements for turbines constructed after 1977. Owners and operators of existing and new turbines may use monitoring that meets the pre-existing monitoring requirements.

**CFR Sections Affected:** 40 CFR Part 60, Appendices A-2, A-4, and A-7

**General Explanation:** EPA promulgated amendments to **update five instrumental test methods that are used to measure air pollutant emissions from stationary sources** by simplifying and updating the procedures.

**CFR Sections Affected:** 40 CFR 63.6; 63.8; 63.10; 63.102; 63.105; Table 3 to Subpart F; 63.152; 63.301; 63.310; 63.342; 63.480; 63.506; Table 1 to Subpart U; 63.526; 63.562; 63.600; 63.620; 63.695; 63.743; 63.773; Table 2 to Subpart HH; 63.848; 63.850; 63.864; 63.866; 63.998; 63.1101; 63.1108; 63.1111; 63.1164; 63.1206; 63.1251; 63.1256; 63.1258-1259; 63.1283; Table 2 to Subpart HHH; 63.1310; 63.1335; Table 1 to Subpart JJJ; 63.1361; 63.1366-1367; 63.1386; 63.1400; 63.1402; 63.1413; 63.1416; Table 1 to Subpart OOO; 63.1420; 63.1439; Table 1 to Subpart PPP; 63.1448; 63.1453; 63.1516; 63.1542; 63.1547; 63.1570; Table 44 to Subpart UUU; 63.1651; 63.1656; 63.1960; 63.1965; 63.2150; 63.2164; 63.2171; 63.2250; 63.2271; 63.2350; 63.2378; Table 12 to Subpart EEEE; Table 12 to Subpart FFFF; Table 1 to 63.2850; 63.2852; Table 1 to 63.2870; 63.2872; 63.2984; 63.2986; 63.3100; 63.3163; 63.3500; 63.3542; 63.3552; 63.3900; 63.3963; 63.4100; 63.4110; 63.4163; 63.4300; 63.4310; 63.4342; 63.4352; 63.4500; 63.4563; 63.4700; 63.4763; 63.4900; 63.4962; 63.5515;

63.5555; Table 10 to Subpart UUUU; 63.5835; 63.5900; 63.5990; 63.6140; 63.6175; 63.6640; 63.6675; 63.7100; 63.7121; 63.7185; 63.7187; 63.7310; 63.7336; 63.7505; 63.7540; Table 10 to Subpart DDDDD; 63.7720; 63.7746; 63.7810; 63.7835; 63.7935; Table 3 to Subpart GGGGG; Table 10 to Subpart HHHHH; 63.8226; 63.8248; 63.8420; 63.8470; 63.8570; 63.8620; 63.8685; 63.8691; Table 7 to Subpart LLLLL; 63.8794; 63.8812; 63.9005; 63.9040; 63.9305; 63.9340; 63.9375; Table 7 to Subpart PPPPP; 63.9505; 63.9530; 63.9610; 63.9637; 63.9792; 63.9810; 63.9910; and 63.9925

**General Explanation:** EPA promulgated amendments to certain aspects of startup, shutdown, and malfunction (SSM) requirements affecting sources subject to the national emission standards for hazardous air pollutants (NESHAP) in response to a July 29, 2003, petition to reconsider certain aspects of amendments to the NESHAP General Provisions published on May 30, 2003. Most of the General Provisions amendments dealt with clarifying the general duty to minimize emissions and its relationship to the startup, shutdown, and malfunction (SSM) plans required under 40 CFR 63.6(e)(3).

**CFR Sections Affected:** 40 CFR 63.14; 63.1200-1201; 63.1203-1212; 63.1214-1221

**General Explanation:** EPA promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors (HWCs): hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces. The amendments require hazardous waste combustors to meet hazardous air pollutant (HAP) emission standards reflecting the performance of the maximum achievable control technology (MACT).

**CFR Sections Affected:** 40 CFR 63.14; Subpart DDDD: 63.2232-2233; 63.2250; 63.2252; 63.2262; 63.2269; 63.2292; Table 4; Appendix A; Tables 1, 2A, and 2B to Appendix B; and Appendix C

**General Explanation:** EPA promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category. The amendments simplified compliance procedures and clarified other aspects of the rule.

**CFR Sections Affected:** 40 CFR 63.61

**General Explanation:** EPA amended the list of hazardous air pollutants (HAP) contained in section 112 of the Clean Air Act (CAA) by removing the compound methyl ethyl ketone (MEK) (2-Butanone) (CAS No. 78-93-3). This action was taken in response to a petition submitted by the Ketones Panel of the American Chemistry Council (formerly the Chemical Manufacturers Association) on behalf of MEK producers and consumers.

**CFR Sections Affected:** 40 CFR 63.320; 63.340; Table 1 to Subpart N; 63.360; 63.460; 63.468; Appendix B to Subpart T; 63.1500; and 40 CFR 70.3.

**General Explanation:** EPA finalized permanent exemptions from the Title V operating permit program for five categories of nonmajor (area) sources that are

**subject to national emission standards for hazardous air pollutants (NESHAP).**

EPA made a finding for these categories that compliance with Title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome on the source categories. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters.

**CFR Sections Affected:** 40 CFR 63.842-843; 63.847; 63.850; Table 2 and Appendix A to Subpart LL

**General Explanation:** EPA promulgated **amendments to the national emission standards for hazardous air pollutants (NESHAP) for primary aluminum reduction plants**. The amendments revised the emission limit for polycyclic organic matter (POM) applicable to one potline subcategory; revised the compliance provisions to clarify the dates by which all plants must meet the NESHAP requirements; and specified the time allowed to demonstrate initial compliance for a new or reconstructed potline, anode bake furnace, or pitch storage tank, as well as an existing potline or anode bake furnace that has been shutdown and subsequently restarted. EPA made these amendments to reduce compliance uncertainties and improve understanding of the NESHAP requirements.

**CFR Sections Affected:** 40 CFR 63.7507; and Appendix A to Subpart DDDDD

**General Explanation:** EPA promulgated amendments to the **national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters**. The amendments improved and clarified the process for demonstrating eligibility to comply with the health-based compliance alternatives in the rule.

**CFR Sections Affected:** 40 CFR 93.101; 93.116; 93.123; 93.125-127

**General Explanation:** EPA promulgated amendments to the criteria for determining which transportation projects must be analyzed for local particle emissions impacts in PM<sub>2.5</sub> and PM<sub>10</sub> nonattainment and maintenance areas. The amendments established requirements in PM<sub>2.5</sub> areas and revised existing requirements in PM<sub>10</sub> areas.